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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/776,265	02/02/2001	Mark A. Christopherson	P-9126.00	9662

27581 7590 12/06/2002

MEDTRONIC, INC.  
710 MEDTRONIC PARKWAY NE  
MS-LC340  
MINNEAPOLIS, MN 55432-5604

EXAMINER

WINAKUR, ERIC FRANK

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 12/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/776,265

Applicant(s)

CHRISTOPHERSON ET AL.

Examiner

David J McCrosky

Art Unit

3736

--Th MAILING DATE of this communication appears n the cover she t with th correspond nce address --

THE REPLY FILED 19 November 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: \_\_\_\_\_

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).
10. ☐ Other: \_\_\_\_\_

  
Eric F Winakur  
Primary Examiner  
Art Unit: 3736

Continuation of 5. does NOT place the application in condition for allowance because: Applicant argues that Krichen is restricted to situations where an implanted medical device "dumps" its information to a programmer (column 1, lines 46 - 53) and that this type of data transfer is not compatible with Halperin. However, this portion of Krichen is actually describing a deficiency of the prior art, which the Krichen system overcomes. Thus, Applicant's argument is based upon a misunderstanding of the teaching of the Krichen reference. Further, Applicant suggests that Examiner "fails to grasp the limited focus of Krichen", generalizes what Krichen contemplates, and attempts hindsight reconstruction of the claimed subject matter. However, a careful and thorough reading of the references indicates that Krichen teaches a type of data transfer that is compatible with Halperin and that the suggestion to combine comes from the references themselves. As a result, Applicant's arguments are not found to be persuasive and the rejection is maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J McCrosky whose telephone number is 703/305-1331. The examiner can normally be reached on M-F, 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric F. Winakur can be reached on 703/308-3940. The fax phone numbers for the organization where this application or proceeding is assigned are 703/305-3590 for regular communications and 703/305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703/308-0858.